DOCUMENT RESUME

ED 056 388 EA 003 787

TITLE	"Pupil Conduct, Discipline, and Rights": A Report to the Washington State Legislature by the Subcommittee on Student and Personnel Policies of the Joint Committee on Education.
INSTITUTION	Washington State Legislature, Olympia.
PUB DATE	30 Dec 69
NOTE	32p.
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*Conduct; Court Cases; Discipline; *Discipline Policy; Dress Codes; Due Process; *Educational Legislation; *School Law; *Student Rights

ABSTRACT

This report presents commentaries on the legal aspects of student rights and on some of the disciplinary measures utilized by public schools. It proposes legislation designed to assure that schools, in shaping their disciplinary policies, will conform to the framework of existing constitutional law and recent court cases. A related document is EA 003 785. (JF)

ED056388

RECEIVED
JUN 14 1971
WHESO

JOINT COMMITTEE ON EDUCATION

WASHINGTON STATE LEGISLATURE

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
OFFICE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

"PUPIL CONDUCT, DISCIPLINE AND RIGHTS"

A REPORT TO THE LEGISLATURE OF THE STATE

LEGISLATIVE COMMITTEE

ON SCHOOLS AND SCHOOLING

PURSUANT TO THE JOINT

RESOLUTION OF THE

SENATE AND

HOUSE OF

REPRESENTATIVES

EA 003 787

"PUPIL CONDUCT, DISCIPLINE, AND RIGHTS": A REPORT TO THE WASHINGTON STATE LEGISLATURE BY THE SUBCOMMITTEE ON STUDENT AND PERSONNEL POLICIES OF THE JOINT COMMITTEE ON EDUCATION

SUBCOMMITTEE ON STUDENT AND PERSONNEL POLICIES
Representative David G. Sprague, Chairman

Rep. Frank B. Brouillet
Mr. Charles R. Guthrie
Mrs. Jacqueline Hutcheon
Mr. Ross K. Rieder
Mr. Gary D. Gayton
Rep. Dale E. Hoggins
Sen. Jack Metcalf

Mr. William Daley, Consultant

JOINT COMMITTEE ON EDUCATION

Executive Committee:

Rep. Frank B. Brouillet
Chairman

Sen. R. G. "Dick Marquardt
Vice Chairman

Sen. Bob Ridder
Secretary

Executive Secretary:

Mr. Ralph E. Julnes

Senators:

Pete Francis
Jack Metcalf
Gary M. Odegaard

Representatives:

Dale E. Hoggins
Audley F. Mahaffey
David G. Sprague
Harold S. Zimmerman

COMMITTEE OFFICES

Public Health Building
Olympia, Washington 98501

3731 University Way N.E.
Seattle, Washington 98105

December 30, 1969

EA 003 787

Executive Committee
Rep. Frank B. Brouillet, *Chairman*
Sen. R. G. "Dick" Marquardt, *Vice Chairman*
Sen. Bob Ridder, *Secretary*

Executive Secretary
Ralph E. Julnes

Phone: (206) 543-4890
SCAN 323-4890

JOINT COMMITTEE ON EDUCATION

WASHINGTON STATE LEGISLATURE
3731 UNIVERSITY WAY N.E.
SEATTLE, WASHINGTON 98105

Senators
Jack Metcalf
Gary M. Odegaard
Wesley C. Uhlman

Representatives
Dale E. Hoggins
Audley F. Mahaffey
David G. Sprague
Harold S. Zimmerman

December 30, 1969

GOVERNOR DANIEL J. EVANS AND
MEMBERS OF THE WASHINGTON STATE LEGISLATURE:

The decade of the 1960's must certainly be characterized as that age which sponsored the emergence of the most highly active, aware, involved, and determined secondary school students that this nation has ever known. It was a decade also of radical changes in standards of dress and physical appearance of our youth and a desire for a more active involvement in the government of their affairs. The emergence of these two facets of our students has brought about many confrontations with school authorities with respect to standards of conduct for students, and the demand for the extension of civil rights to these students who desire to achieve first-class citizenship.

The Subcommittee on Student and Personnel Policies, in reviewing student activities and demands generally, has considered what appeared to be the civil rights of school age citizens and the disciplinary actions, particularly suspension and expulsion, which school administrators have utilized when dispensing justice following confrontations between students and school administrations. It is evident to this Subcommittee that there is a close relationship existing between the demands for student civil rights and the type of disciplinary action employed by the public schools.

This report represents a commentary upon the legal aspects of the issue of student rights and also upon the realm of disciplinary measures utilized by public schools. The report does not intend to suggest the impairment of the rightful authority of schools to conduct themselves in a manner consistent with furthering the educational opportunities of the youths enrolled in our public schools. The proposed legislation is simply an attempt to bring the conduct of the schools generally within the true democratic framework established by the United States Constitution and the Constitution of the State of Washington. The sustaining belief is that the more closely allied public schools are to the revered tenets of our democratic governmental philosophy, more surely will there emerge as a product of the educational process, wiser, more involved, and active young citizens.

Respectfully submitted,

David G. Sprague

Representative David G. Sprague, Chairman
Subcommittee on Student and Personnel Policies

DGS:km

TABLE OF CONTENTS

	Page
LETTER OF TRANSMITTAL	2
"PUPIL CONDUCT, DISCIPLINE, AND RIGHTS": A REPORT TO THE WASHINGTON STATE LEGISLATURE BY THE SUBCOMMITTEE ON STUDENT AND PERSONNEL POLICIES OF THE JOINT COMMITTEE ON EDUCATION	3
Student Conduct and Discipline	4
Substantive Due Process	5
Procedural Due Process	6
A Legislative Proposal	7
APPENDICES	
A. "Rules of Student Conduct--Reasonableness and Validity": A Memorandum by Richard M. Montecucco, Assistant Attorney General . .	9
B. "Three Case Studies": Testimony Given by Dr. Stephen N. Stivers Before the Subcommittee on Student and Personnel Policies	16
C. Legislation Regarding Pupil Conduct, Discipline, and Rights (Fifth Draft, Annotated, 12/29/69)	21

PUPIL CONDUCT, DISCIPLINE, AND RIGHTS: A REPORT TO THE LEGISLATURE BY THE SUBCOMMITTEE ON STUDENT AND PERSONNEL POLICIES OF THE JOINT COMMITTEE ON EDUCATION

Rep. David G. Sprague
Chairman

Mr. William Daley
Consultant

Since the early years of this decade, American educational systems have experienced the discomfiture of student unrest. It has been a time when institutions of higher education, in particular, have been fraught with student demonstrations, riots, and other forms of general disorder. Closely following these events on the college campus, the American public high school has become a place of student ferment. This report seeks a timely response to such activities and purports to supply a remedy for at least one justifiable student grievance--namely, the inadequacy of the written rules and regulations in many school districts regarding student conduct, discipline, and rights.

STUDENT CONDUCT AND DISCIPLINE

By statute, the power to discipline students resides in both school boards and teachers. RCW 28A.58.101 grants boards of directors the responsibility to "[s]uspend or expel pupils from school or discipline such pupils upon their refusal to obey the reasonable rules or regulations of such school or as promulgated by the superintendent of public instruction and the state board of education." And RCW 28A.67.100 gives teachers an independent authority ". . . to hold every pupil to a strict accountability for any disorderly or antisocial conduct . . . ." By themselves these provisions would seem to grant school authorities plenary power over pupils. In fact, school authorities have largely acted as if this was the case. Note, for example, the following assessment by Mr. Gary Little, Assistant Attorney General, in testimony before the Subcommittee:

> I'd like to first say that the profession of the law has not been of much service to the profession of education in the past decade with regard to assisting them in preparing for the problems in this area of legal rights and responsibilities that they now find they are facing. Traditionally, the lawyer's advice to his school board clients or his school administrator clients was: well, don't put anything in writing. Let's keep it real loose. Let's have a friendly school where, you know, the principal makes up the rules as he goes along and the students will look upon him as some kind of a father who keeps order in the family. That's been the way in which, I'm afraid, most school districts, if not all school districts, have operated this discipline system for many, many years. And,

> perhaps, rightly so when we were more concerned with simpler issues and living in simpler times. The problem today, however, is that where school districts and school boards have not done the job of determining these extremely complicated questions in advance, the courts have been all too willing--and have indicated that they will continue to be willing--to come into the situation and make rules and regulations for the school districts. That is to say, if a school district at this point in time does not have rules of procedural due process that it can apply in situations where students are suspended, the courts have indicated they will review the situation and, in effect, substitute their judgment for that judgment of the school administrator or the school board.

The contemporary problems are that school districts in general do not have written rules of conduct available to students, they have not adopted reasonable procedures for handling discipline cases, and they have forced confrontations with students over unreasonable requirements regarding student conduct and rights. In essence, school authorities do not have plenary authority. In fact, school authorities are constrained by both substantive and procedural due process of law. Recent court decisions have emphasized these constraints and seat-of-the-pants procedures in the schoolhouse are as archaic as third degree interrogations in the jail house.

SUBSTANTIVE DUE PROCESS

Probably no other aspect of student conduct and behavior in the common schools has attracted more public attention than clothing styles of girls, particularly skirt lengths, and hair length of boys. The schools, in their attempts to counter current trends of personal appearance, have brought about many confrontations between school authorities and students. Some of these substantive concerns have ended up in the courts for settlement and have received varied treatment. However, some standards are discernible. These are:

1. A rule is unreasonable if it suppresses a student's right guaranteed under the United States Constitution. This is particularly true regarding First Amendment Freedoms, i.e., speech, press, and religion--particularly those dealing with prayers in schools and flag salute.

2. A rule is unreasonable if it is not directly related to the educational process. By this is meant that presumption of direct relationship will be on the side of school officials but that the rule is subject to legal challenge. For example, rules requiring pregnant students to withdraw have been upheld, but those requiring all married students to withdraw have received varied treatment, with the greater tendency to void such rules. In other words, school authorities can't prohibit certain behavior simply because they as individuals have personal preferences, tastes, or biases. They must be able to present

a case, if challenged, that the prescribed or proscribed behavior is directly related to the educational process.

3. A rule is unreasonable if it fails the test of reasonableness. For example, a recent superior court decision in Washington declared a no-more-than-three-inch-above-the-knee requirement for girls' skirts as unreasonable, for the requirement was too hard and fast. It did not leave room for reasonable deviations based on either the size or shape of the girl in question.

The Subcommittee has pondered what can be done to provide greater certainty to school officials in the area of substantive due process. However, it is difficult to specify in the abstract what may or may not be a substantive right. In the main, these matters must be judged on a case-by-case approach. In fact, codification of substantive rights might tend to create a false sense of security on the part of school administrators in an ever expanding field of law. The standard, though, that no pupil should be expelled, suspended or disciplined in any manner for the performance of or failure to perform any act not directly related to orderly operation of the school or school sponsored activities or any other aspect of the educational process is discernible and should be codified in statute.

PROCEDURAL DUE PROCESS

It can be argued philosophically that no student should ever be unjustly punished. However, the Subcommittee does not believe that there is a legislative or judicial remedy for all wrongs that students might suffer. What is more important is that the State has a vested interest in keeping pupils enrolled in school. And when school officials deny students the right to attend school for insufficient or insignificant reasons, they are in fact having a detrimental and significant effect on the State's socio-economic development as well as the individual's. Although the individual concern is important, this State has a compulsory attendance law in order to ensure an educated citizenry, a requisite for a viable democratic system. It does not take lightly the use of suspension or expulsion as methods of discipline. Such drastic measures should be reserved for cases where there are no other practicable alternatives.

The court's approach is one of addressing itself to the question of denial of an individual's right to attend educational institutions. The Attorney General's Office of the State of Washington holds that it is now a settled question of law that students dismissed from public educational institutions must be afforded procedural due process. (See Appendix A.) While there is some difference of opinion, even among judges, as to what is required by school authorities to satisfy the due process clause of the Fourteenth Amendment, some courts have given rather explicit instructions. In one of the most recent cases, one dealing with higher education, the presiding judge noted:

> "The procedures to be followed in preparing for and conducting such hearing shall include the following

procedural features: (1) a written statement of the charges to be furnished each plaintiff at least 10 days prior to the date of the hearing; (2) the hearing shall be conducted before the President of the college; (3) plaintiffs shall be permitted to inspect in advance of such hearing any affidavits or exhibits which the college intends to submit at the hearing; (4) plaintiffs shall be permitted to have counsel present with them at the hearing to advise them; (5) plaintiffs shall be afforded the right to present their version as to the charges and to make such showing by way of affidavits, exhibits and witnesses as they desire; (6) plaintiffs shall be permitted to hear evidence presented against them, and plaintiffs (not their attorney) may question at the hearing any witness who gives evidence against them; (7) the President shall determine the facts of each case solely on the evidence presented at the hearing therein and shall state in writing his finding as to whether or not the student charged is guilty of the conduct charged and the disposition to be made, if any, by way of disciplinary action; (8) either side may, at its own expense, make a record of the events at the hearing. (Esteban (I) v. Central Missouri State College, 277 F. Supp. 649, (W.D. Mo. 1967.)

There is much evidence for believing that schools either have never developed or have strayed in their disciplinary procedures from these guidelines and requirements of procedural due process. For example, students are often subjected to either expulsion or suspension prior to a fair hearing. Often there is no clearly-defined route of appeal. In many instances, students are asked to testify against themselves. These are but some examples of ways in which procedural due process is violated. In testimony offered before the Subcommittee, examples were given of instances of these occurrences. (See Appendix B.) Therefore, it is to the concern of procedural due process of law that this report is mainly directed.

A LEGISLATIVE PROPOSAL

Testimony before the Subcommittee indicated that the Legislature could perform a valuable service to school districts by enacting a law uniformly requiring school districts to adopt rules and regulations regarding student conduct, discipline, and rights. Such a law, it was claimed, would cause school district boards to acquaint themselves with current legal norms and to be responsive to legitimate student concerns. It was further noted that such a law should specify minimal due process procedures. The Subcommittee's draft of this legislation is included in Appendix C. The act further proposes to modify and recodify current law on this subject in a new RCW 28A chapter.

The main concern of this legislative proposal is to secure compliance of the disciplinary procedures of the common schools with what is already, in fact, the law of the land as described above. Such legislation is also felt to be necessary in order to deter the present tendency of taking school matters into the judicial system for consideration. It should eliminate the necessity of having routine

disciplinary procedures of the schools brought to question in courts of law. The legislation is not intended to restrict either the school board, administration, or teachers in the operation of the schools and the educational process. Rather, it should be viewed as an attempt to strengthen the activities of these school authorities by placing the aura of constitutional legitimacy upon their actions.

It can further be argued that there is no need to believe that the schools should operate any less democratically than does the American nation as a whole. It is inferred that democratic management is stronger and more wholesome for human beings than any other type of organization extant in the world. Such legislation, then, would be an affirmation of faith and would necessarily be in line with the philosophy that students learn democracy by living it. For this reason, the proposed act permits, but does not require, school boards to delegate a limited responsibility to students for disciplinary action.

This proposal, then, reflects an expectation that there will be a general strengthening of the democratic atmosphere of the public schools in the State of Washington in that there will be a close alignment between the procedural due process rights of school-age citizens and the operation of the public schools. Further, such proposed legislation should help insure that the public schools will not become common defendants in the courts of law because of their ignorance and lack of application of suitable and constitutional procedural due process rights when levying disciplinary action, particularly suspension and expulsion, upon students in the common schools. The Subcommittee recommends:

RECOMMENDATION NO. 1

That legislation be enacted that will require local school districts to adopt written rules and regulations regarding school conduct, discipline, and rights. That such legislation be primarily directed to procedural due process of law. And that such legislation reflect current legal norms regarding substantive and procedural due process.

The Subcommittee's proposed draft of the needed legislation, as noted, is appended to this report. In preparing this draft careful consideration has been given to modifying other relevant provisions of current law. The Subcommittee recommends:

RECOMMENDATION NO. 2

That the Joint Committee on Education give careful consideration to the specific legislative proposal developed by the Subcommittee on the matter of student conduct, discipline, and rights.

APPENDIX A

STATE OF WASHINGTON
SLADE GORTON
ATTORNEY GENERAL
TEMPLE OF JUSTICE
OLYMPIA, WASHINGTON 98501
September 16, 1969

M E M O R A N D U M

TO: JOINT COMMITTEE ON EDUCATION

FROM: RICHARD M. MONTECUCCO, Assistant A. G.

RE: Rules of student conduct - reasonableness and validity.

Generally, a state may impose such disciplinary measures as it sees fit on the pupils attending the public schools in its state. The legislature may delegate that power. RCW 28A.58.101 provides:

> "Every board of directors, unless otherwise specifically provided by law, shall:
>
> ". . .
>
> "(2) Suspend or expel pupils from school or discipline such pupils upon their refusal to obey the reasonable rules or regulations of such school or as promulgated by the superintendent of public instruction and the state board of education."

Thus, power has been granted to the superintendent of public instruction, the state board of education, and the authorities of the local school to promulgate reasonable rules. Whether a given rule is in itself reasonable is a question of law which will be decided by a court. However, there is a strong presumption that exists in favor of the reasonableness and propriety of a rule that has been adopted by school authorities under statutory authority. This presumption is not affected by the consideration of possible abuses of the rule where it may be construed as reasonably designed for a legitimate purpose. Generalizations about rules are not very helpful in predicting whether or not an individual rule will be upheld. However, the following segment from 79 CJS, § 495(b), Schools, should provide a feeling:

> "Various rules for the discipline and control of pupils have been held to be reasonable and valid such as, among others, requiring tardy pupils to remain either in the hall or in the principal's office until the opening exercises of the school are concluded; pupils financially able to pay deposit to insure proper treatment of free textbooks; a parent or guardian to sign and return to the teacher the report

> of the teacher in respect of a pupil's standing, attendance, and deportment; . . . pupils participating in graduation exercises to wear caps and gowns; pupils not to leave school grounds during school hours or other specified times during the school day; pupils not to wear metal heel plates; pupils not to use face paint or cosmetics; and pupils' lunches to be restricted to those brought from home or provided by the school cafeteria.
>
> "On the other hand, it has been held that a rule is not reasonable which will deprive a child of school privileges except as a punishment for a breach of discipline or an offense against good morals, such as a rule barring from the schools pupils who are married, or which requires pupils to pay for school property which they wantonly or carelessly break or destroy, under penalty of suspension, or which seeks to monopolize the school trade for the school supply house by forbidding pupils to trade elsewhere, . . ."

A rule may also be unreasonable if it suppresses a student's rights guaranteed under the United States Constitution. The case of Ferrell v. Dallas Independent Sch. Dist., 261 F. Supp. 545 (1966), upheld the suspension from school of members of a local rock band who wore their hair in a Beattle cut as provided in their contracts of employment with an agent. The federal court in that case found no suppression of the students' constitutional guarantees because the school authorities had demonstrated a belief that such haircuts caused disruption and hampered the educational environment of the school. A similar California decision upheld a school rule which required the boys in the school to be clean-shaven.

Rules requiring pregnant students to withdraw have been upheld, but those requiring all married students to withdraw from high school have received varied treatment. The tendency has been not to uphold such rules.

Perhaps the most significant recent case in the area is Tinker v. Des Moines Sch. Dist., 393 U.S. 503 (1969). In that case students were barred from attending school because they wore black armbands to protest the Government's policy in Viet Nam. The high Court held that such a rule banning the armbands was unreasonable. The Court in Tinker quoted with approval the opinion of Mr. Justice Jackson in West Virginia v. Barnette, 319 U.S. 624, 637 (1943):

> "'The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures - Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.' . . ."

The Court in Tinker was particularly interested in the absence of violence presented in this case. At page 509, the Court states:

> ". . . Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption."

Further, the Court was interested in the discriminary nature of this particular rule. Again quoting,

> "It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism . . . Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with school work or discipline, is not constitutionally permissible." (p. 510, 511)

Rules which infringe on other 1st Amendment freedoms will also be held unconstitutional. Perhaps most significant are the cases involving religious freedom, particularly those dealing with prayers in schools and the flag salute.

Enforcement - Due Process Requirements

It is now a settled question that students dismissed from public educational facilities must be afforded due process of law. Unfortunately, the exact requirements of due process

in the school discipline environment is not clear. Courts have, therefore, resorted to a case-by-case examination to determine whether or not in the particular case the rudiments of fair play have been observed. Those rudiments may be briefly summarized as notice and some opportunity for hearing before dismissal.

The landmark case in the area is Dixon v. Alabama St. Bd. of Education, 294 F. 2d 150, 5th Cir., cert. denied 368 U.S. 930 (1961). Because it is an often-cited authority, it deserves some consideration. In that case, six Negro students at a state school for Negroes were dismissed because they had participated in a demonstration - a stand-in - at a lunch grill located in the basement of the Montgomery County court house. No formal charges by school authorities were placed against them, but the board of education, which includes the governor of the state, met and on the basis of reports received from the governor, including some private investigations made by him, expelled the six students along with three others. The basic question before the court was: Does due process require notice and some opportunity for hearing before students in a tax-supported college are expelled for misconduct. The court answered in the affirmative. That the court's ruling in this case would extend to disciplinary procedures in public high schools seems clear from the following excerpts:

> 'Whenever a governmental body acts so as to injure an individual, the Constitution requires that the act be consonant with due process of law. The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved. . . ." (p. 155)

The court also touched upon the question of whether education is a right or privilege. Quoting from an earlier case, the court said:

> ". . .'One may not have a constitutional right to go to Bagdad, but the government may not prohibit one from going there unless by means consonant with due process of law.' . . ."

Further, the court stated:

> ". . . the State cannot condition the granting of even a privilege upon the renunciation of the constitutional right to procedural due process. . . . (p. 156)
>
> ". . . It requires no argument to demonstrate that education is vital and, indeed, basic to civilized society. . . ." (p. 157)

The court in Dixon specified those requirements which it thought would satisfy due process in this case:

> ". . . The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulation of the Board of Education. The nature of the hearing should vary depending upon the circumstances of the particular case. . . By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses . . . This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required. . . . Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college. In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. . . ." (pp. 158, 159)

A 1965 case, Leonard v. School Committee of Attleboro et al, 212 N.E. 2d 468 stated:

> ". . . A hearing [before a disciplinary committee] of this sort is quasi judicial in character and must be conducted fairly and impartially. [citations omitted] An opportunity to present one's case before an impartial tribunal 'actuated by a spirit of judicial fairness' is a minimum requirement. . . ."

Moore v. Student Affairs Committee of Troy State Univ., 284 F. Supp. 725 (M.D. Ala. 1968), reaffirmed the position taken in Dixon. In addition, the court stated:

> ". . . such hearings should be open to the press when this is possible without interference with the orderly operation of the educational institution. But . . . 'an

> open hearing in the sense that a defendant in a criminal case is entitled to a hearing in open court is not contemplated by the law insofar as the compliance with the procedural rights of students are concerned.. .'
>
> ". . . The privilege of attending public educational institutions must be recognized as a right for those qualified to meet the academic requirements and whose conduct does not interfere with the orderly operation of an educational institution. . . ." (p. 731)

As a summary, one might consider the specific instructions given by the court in Esteban (I) v. Central Missouri State College, 277 F. Supp. 649, (W.D. Mo. 1967):

> ". . . The procedures to be followed in preparing for and conducting such hearing shall include the following procedural features: (1) a written statement of the charges to be furnished each plaintiff at least 10 days prior to the date of the hearing; (2) the hearing shall be conducted before the President of the college; (3) plaintiffs shall be permitted to inspect in advance of such hearing any affidavits or exhibits which the college intends to submit at the hearing; (4) plaintiffs shall be permitted to have counsel present with them at the hearing to advise them; (5) plaintiffs shall be afforded the right to present their version as to the charges and to make such showing by way of affidavits, exhibits and witnesses as they desire; (6) plaintiffs shall be permitted to hear the evidence presented against them, and plaintiffs (not their attorney) may question at the hearing any witness who gives evidence against them; (7) the President shall determine the facts of each case solely on the evidence presented at the hearing therein and shall state in writing his finding as to whether or not the student charged is guilty of the conduct charged and the disposition to be made, if any, by way of disciplinary action; (8) either side may, at its own expense, make a record of the events at the hearing."

A New York court in Goldwyn v. Allen, 54 N.Y. Misc. 2d 94, 281 N.Y.S. 2d 899 (1967), held that the Gualt case bestowed due process of law to minors in administrative proceedings such as the one presented there. Thus, a high school student in

Goldwyn was held to have a right to counsel in a hearing to determine whether or not that student would be excluded from state examinations. The cases dealing specifically with the right to counsel in college dismissal cases are evenly split. The case of Madera v. Bd. of Education of City of New York, 386 F. 2d 778, 2d. Cr. (1967), establishes the fact that right to counsel is not an essential ingredient to fair hearing in all types of proceedings. Again, the court will approach each case on a case-by-case basis.

RMM

bw

APPENDIX B

Testimony Given Before the Hearing of the

Subcommittee on Student and Personnel Policies

Rep. David Sprague, Chairman

Student Union Building
University of Washington
October 3, 1969

DR. STEPHEN STIVERS, Director of Research, Joint Committee on Education: Mr. Chairman, members of the committee, ladies and gentlemen. The staff of the Joint Committee on Education has prepared three case studies of occurrences in the schools relevant to today's hearing. In each case, charges were levied against the school authorities that the procedures followed by them in dispensing disciplinary action violated the civil rights of the students involved. There are three provisions in the United States' constitution with which these three cases are concerned. They are the First, Fifth, and Fourteenth amendments. The First and Fifth amendments are part of the Bill of Rights which established certain protections for the individual citizen against encroachments by the federal government. The Fourteenth Amendment, with its "due process clause," extended these protections for the individual against encroachment by a state.

The First Amendment prohibits the Congress from making any "law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

The Fifth Amendment, among other things, provides that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law."

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property without due process of law."

With these three amendments in mind, I shall now proceed with the case studies.

The first case occurred in a junior high school. On the first day of school, a Tuesday, five girls were accused by school authorities of smoking and were expelled....

Expulsion in this case meant that the girls were to be excluded from school until the parents of each girl came to the school and discussed the matter of expulsion with the school authorities. This procedure is intended to acquaint the parents with the problem. The parents are also involved in this manner with the resolution of the problem. The girls were then placed in separate rooms and retained there for the remainder of the day, consequently missing lunch. While alone in these separate rooms, each girl was confronted with the information that the other four girls had indicated her guilt and that she should "confess." Ultimately, one girl did confess that she had smoked. The girls were then placed on a bus and sent home. On the following day, four of the girls' parents came to school and, together with their daughters, conceded that the girls were wrong and that the girls were sorry and would not do it again. The mother of the girl who confessed, however, was not satisfied with the procedure the school authorities had utilized in extracting her daughter's confession. On the day of the expulsion, she had gone to the school after her daughter had arrived home and asked to see the principal. This was denied on the grounds that she had no appointment. The mother then sought assistance from an agency outside the school. On Thursday, the mother and an advisor from the outside agency met with the director of pupil personnel in the district. The director of pupil personnel arranged a meeting with the principal and the vice principal on Friday, the following day. At this meeting, the principal reiterated to the girl and her mother that the other girls involved had informed on her and that it would end the matter if the girl acquiesced to this evidence and confessed her part in the matter. However, in the interim period between Tuesday and this meeting, the mother had procured signed statements from the other girls involved that they had indeed not informed. This led to an impasse as the girl did not admit any guilt. She was, however, reinstated in school because, technically, the provisions of the expulsion--namely, school visitation by the parents--had been met. The case ended with the girls maintaining that it was incumbent upon the school authorities to prove her guilt, while the school authorities maintained the counter-position. At this time, whether or not there is any connection between the case and the item, the girl was relieved as editorial page editor of the school paper.

The case is offered as a possible violation of the Fifth and Fourteenth amendments. It is to be recalled that, among other things, she was denied rights of counsel and was urged to present testimony against herself without due process of law which would have tended to incriminate her.

The second case studied portrays an incident in a senior high school. In early January of last year, four students were threatened with expulsion for distributing literature in the school. The literature consisted, among other items, of back issues of "Helix" and copies of an underground paper of the school. The students became upset and after a lapse of a few days went to an

outside agency for advice and assistance. After a period of two weeks from the initial confrontation of school authorities and students, the students and representatives, including a lawyer from the outside agency, met with the principal. At this meeting the principal stated that only the school annual and the school newspaper were acceptable for distribution in the schools. His rationale for this position was that too many sources of information distract the students' minds. At this point, negotiations with school officials ended as the principal decided to allow a lawyer to represent the school. Negotiations then proceeded with the school's lawyer, who was provided by the Attorney General's office of the state. These negotiations continued until the end of the school year with no apparent change in school policy toward distribution of written material in the school. However, none of the four students were expelled and they subsequently were graduated in June.

Although the issue of the study remains unresolved at this time, there have been some changes in policies regarding the student code. All clothing restrictions have been abolished to the limit that societal standards are maintained. The study suggests that some school procedures may violate aspects of the guarantees of the First Amendment. In that the school has experienced an inundation of pamphlets and other materials since the initial confrontation last January, it appears that censorship and suppression of information are difficult tasks, even under arbitrary circumstances.

The third study reports a case which occurred in a high school. A controversy originated in a movement by black students to organize a black student union at the high school. The movement began in the spring of 1968. At this time a constitution was presented to the high school administration but was ultimately denied because it contained a clause racially discriminating in membership. A second constitution was presented shortly following the opening of school in the fall term of 1968 which contained no racially discriminating membership provisions. In the interim period between presentations of the two constitutions, a de facto black student union had been formed, the officers of which submitted this second constitution. This second constitution was submitted to the superintendent for his approval, which was in accord with a district policy. Approval remained pending until the first week in November. The de facto black student union, having had no word concerning the constitution, planned a meeting at noon in the school auditorium. One of the black student union officers was suspended for attempting to post signs in the school relative to the meeting. Black students, upon hearing of the suspension, were intensely concerned; however, the noon meeting was called off because, unofficially, it was reported that the superintendent had approved the constitution. When no official word was received, a walk-out of classes was planned for the

following morning. On the following day, the majority of black students walked out of classes and met at a nearby location. Four delegates were chosen to meet with the principal. After this meeting, the black students returned to the school auditorium where they were informed that they were truant by being absent from class and that the principal would not meet with any large group en masse. Representatives were chosen and accompanied by one of the boy's mothers and CAMP workers met with the principal. The remainder of the black students, upon deciding to return to classes in the afternoon, left the auditorium. Sporadic talks occurred between the representative group and the school administration, although any effective results were denied due to emotional demonstrations by the students during the lunch hour. These demonstrations continued through the afternoon as many students--black and white--remained out of school. However, prior to the closing of school that afternoon, most students had either returned to classes or had dispersed. On Friday, concerned black parents met at the school with black students, although no formal meeting could be arranged with the principal. No resolution of issues was reached. On the succeeding Tuesday morning, following a vacation on Monday, two more boys were told that they were suspended from school. In actuality the action was more of a home referral than of a suspension and both boys were told that they must return to school with their parents to discuss the situation. On Wednesday, one boy and his mother were informed that he could not return to that high school. The other boy and his family were informed on Friday that he also could not return to that high school. The boy who had been suspended for trying to display signs was also denied readmission to that high school on Friday. All three boys were given the option of transferring to another school. This was done, ending the case....

The case has been cited as being one where due process was alleged to have been violated. Reasons for the allegation are:

(1) When an accusation of wrongdoing has been leveled, the accused must be given the opportunity to be heard prior to the imposing of punishment.

(2) The accused must be given the right to counsel.

(3) The accused must be able to present witnesses on his own behalf.

(4) Notification in writing must be presented to the accused advising him of the nature of his alleged crime.

(5) Sufficient time must be allowed the accused to prepare his defense.

(6) The accused must have the opportunity to cross-examine witnesses for the prosecution.

None of these provisions were evident in the described case.

The suffix of this testimony is offered as a question. Are students in our schools protected by those rights of citizens against encroachments by the federal government, the several states, and the creatures of these two aforementioned entities, or does a system which is the educating for life in this democratic society have, in the course of its efforts, the right to deny those rights and privileges extended to all citizens of this nation?

APPENDIX C

TO: MEMBERS OF THE SUBCOMMITTEE ON STUDENT AND PERSONNEL POLICIES

FROM: REPRESENTATIVE DAVID G. SPRAGUE, CHAIRMAN,
SUBCOMMITTEE ON STUDENT AND PERSONNEL POLICIES, JOINT COMMITTEE ON EDUCATION

RE: LEGISLATION REGARDING PUPIL CONDUCT, DISCIPLINE, AND RIGHTS
(FIFTH DRAFT, ANNOTATED, 12/29/69)

At the October 3, 1969, public hearing of the Subcommittee on Student and Personnel Policies, several witnesses agreed that the adoption of legislation requiring local school boards to adopt written rules and regulations regarding pupil conduct, discipline, and rights would eliminate much of the uncertainty and chaos presently facing all concerned who must deal with the related problems. It was generally conceded that such provisions of law should reflect recent court decisions but should permit school districts a considerable amount of flexibility regarding the details of implementation. Since that date the staff of the Committee has met with various groups. The attached legislation is being submitted for Subcommittee consideration.

In drafting this legislation, the following decisions were made:

1. All provisions regarding pupil conduct, discipline, and rights should be in a separate chapter of Title 28A. For this reason RCW 28A.58.190, 28A.58.200, 28A.67.100 and 28A.87.120 were each repealed and their substance either in total or in amended form reenacted in this bill.

2. Parents should have some access to school boards on all disicplinary matters but should be encouraged to resolve the matter before school administrators in some other satisfactory manner.

3. Teachers should continue to have their own legal authority, without school board authority, to discipline pupils and that their disciplinary actions should continue to be subject to challenge in a court of law.

4. The State has a vested interest in keeping pupils enrolled in and attending school and should not concern itself in any substantial way with discipline cases and procedures for such discipline unless a school district attempts to suspend or expel such a pupil.

5. Pupils and parents should be given a copy of school board rules and regulations regarding pupil conduct, discipline, and rights.

6. Some provision should be made to permit, at the option of the school board, the involvement of pupils in disciplinary action but that their decisions should be reversible by a school administrator and that they should be prohibited from prescribing suspension or expulsion.

7. The power of suspension or expulsion should reside in the school board and they alone should determine if and how such authority should be delegated.

8. The State should define, on the basis of recent court action, the minimum requirements for a fair hearing. It is further assumed that the court will require a fair hearing only in those cases where the pupil is being threatened with the denial of his right to attend school.

9. Actions or lack of action by a school board regarding suspension or expulsion should continue to be subject to appeal to superior courts.

10. No attempt should be made to define in detail what specifically constitutes a "reasonable" rule or regulation or what constitutes "reasonable" punishment for those are matters more properly for the courts.

NOTE: Please see attachment following page 30 for two amendments added to the legislation by the full Joint Committee on Education on January 12, 1970.

LEGISLATION REGARDING PUPIL CONDUCT, DISCIPLINE, AND RIGHTS

(FIFTH DRAFT, ANNOTATED, 12/29/69)

Section 1. RCW 28A.58.101 is amended to read as follows:

Every board of directors, unless otherwise specifically provided by law, shall:

(1) Enforce the rules and regulations prescribed by the superintendent of public instruction and the state board of education for the government of schools, pupils, and certificated employees; ((~~and~~))

(2) ((~~Suspend or expel pupils from school or discipline such pupils upon their refusal to obey the reasonable rules or regulations of such school or as promulgated by the superintendent of public instruction and the state board of education.~~)) Adopt and distribute to each pupil in the district reasonable written rules and regulations regarding pupil conduct, discipline, and rights, and shall be available upon request to parents or guardians. Such rules and regulations shall not be inconsistent with law or the rules and regulations of the superintendent of public instruction or the state board of education.

(3) Suspend, expel, or discipline pupils in accordance with the procedures prescribed in chapter 28A. ... RCW.

[Drafter's Note: Changes in current law are as noted. Major changes are that rules and regulations must be adopted, written, and distributed to pupils and available to parents or guardians upon request, and that a reference is made to a new 28A chapter which will be on pupil conduct, discipline, and rights.]

NEW SECTION. Sec. 2. As used in this chapter the term:

(1) "Expulsion" shall mean the denial of the right of school attendance for an indefinite time period;

(2) "Suspension" shall mean the denial of the right of school attendance for a stated time period;

(3) "Discipline" shall mean all forms of punishment other than expulsion and suspension and shall include the removal of a pupil by a teacher from a particular class for a stated or indefinite time period.

[Drafter's Note: Current law does not define these terms and it is necessary to distinguish between the pupil's removal from the school and from the classroom.]

NEW SECTION. Sec. 3. The privilege of attending the common schools shall be recognized as a right for those qualified to meet the requirements prescribed by law, and no pupil shall be disciplined, suspended, or expelled except for sufficient cause.

[Drafter's Note: The lead for this broad statement of student rights is taken from Moore v. Student Affairs Committee of Troy State Univ., 284 F. Supp. 725 (M.D. Ala., 1968) where the court stated: "The privilege [in this case higher education] of attending public educational institutions must be recognized as a right for those qualified to meet the academic requirements and whose conduct does not interfere with the orderly operation of an educational institution . . . ." (p. 731.)]

NEW SECTION. Sec. 4. Any pupil who shall willfully deface or otherwise willfully injure any school property shall be subject to discipline, suspension, or expulsion. The parent or guardian of such pupil shall be liable for damages as otherwise provided by law.

[Drafter's Note: This is a restatement and modification of RCW 28A.87.120 and brings it into this new chapter. It is amended as follows: "Any pupil who shall willfully deface or otherwise willfully injure any school property ((;)) shall be ((~~liable~~)) subject to discipline, suspension, ((~~and~~)) or ((~~punishment~~)) expulsion. The parent or guardian of such pupil shall be liable for damages as otherwise provided by law." The term "willfully" is inserted to prevent punishment or liability for an unintentional destruction of school property. Other changes should be self-explanatory.]

NEW SECTION. Sec. 5. No pupil shall be expelled, suspended, or disciplined in any manner for the performance of or failure to perform any act not directly related to the orderly operation of the school or school-sponsored activities or any other aspect of the educational process.

[Drafter's Note: The intent of this section is to prohibit school authorities from promulgating rules and regulations over matters not directly related to the education process and to prohibit school authorities from punishing students for acts outside the school's proper concern. In the past, the courts gave deference to school authorities on this matter, but a current tendency is to permit legal challenge and require school authorities to justify why a particular act or behavior comes under the concern of the schools. It also should be noted that the courts are becoming more critical of punishment by school authorities for antisocial behavior off the school grounds and out of school hours and for violation of unreasonable standards of conformity regarding attire and personal appearance. It appears that the authority of the schools can only be approached on a case-by-case method. Note, for example, the standard developed in Lander v. Seaver, 32 Vt. 114, 76 Am. Dec. 156, an early Vermont case which is often cited: "The misbehavior must not have merely a remote and indirect tendency to injure the school. All improper conduct of language may perhaps have, by influence and example, a remote tendency of that kind. But the tendency of the acts so done out of teachers' supervision for which he may punish, must be direct and immediate in their bearing upon the welfare of the school, or the authority of the master and the respect due to him. Cases may readily be supposed which lie very near the line, and it will often be difficult to distinguish between the acts which have such an immediate and those which have such a remote tendency. Hence, each case must be determined by its peculiar

circumstances." Note also the standard in Drift v. Snodgrass, 66 Mo. 286, 27 Am. Rep. 343, a Missouri case: "For offenses committed by the scholar while at school, he is amenable to the laws of the school; when not at school, but under charge of the parent or guardian, he is answerable alone to him." In other words, this section is an attempt to define the jurisdiction of school authorities but leaves it to the courts through litigation to determine whether the jurisdictional line has been crossed and whether or not the performance of or failure to perform a specific act is directly related to the educational process. Hopefully, through this process, a body of substantive rights for pupils will emerge in the same manner as First Amendment rights have emerged for the general population.]

NEW SECTION. Sec. 6. Except as otherwise provided by law, common schools shall be open to the admission of all persons between the ages of six and twenty-one years residing in that school district.

[Drafter's Note: This is a word for word reenactment of RCW 28A.58.190 and brings it into the new chapter on student conduct, discipline, and rights.]

NEW SECTION. Sec. 7. Every teacher and school administrator shall have the authority to discipline any pupil for any disorderly conduct while under his supervision and to make recommendations to the proper school authority for the suspension or expulsion of any pupil upon probable cause therefor."

[Drafter's Note: This is a restatement and modification of RCW 28A.67.100 and brings it into this new chapter. It is amended as follows: "Every teacher and school administrator shall have the ((~~power~~)) authority to ((~~hold every~~))discipline any pupil ((~~to a strict accountability~~)) for any disorderly ((~~or antisocial~~))conduct ((~~on the way to and from school or~~)) while under his supervision and to make recommendations to the proper school authority for the suspension or expulsion of any pupil upon probable cause therefor." This provision of Washington law corresponds to what is often stated as "inherent right of teachers"--i.e., the power to provide an atmosphere conducive to teaching. It is an independent power that does not depend upon a delegation from other school authorities. Note how this was treated in a Vermont case, State v. Randall, 79 No. App. 226; "The teacher could not perform the duties of her employment without maintaining proper and necessary discipline in the school [classroom], and when all her other means for doing so failed, in respect to the boy, it was her right, and might be her duty, to expel him [from the classroom], to save the rest of the school [class] from being injured by his presence. It was not the duty of the teacher, under the contract, to teach the school without maintaining proper and necessary discipline in it; if the [school discipline] committee insisted that she should have the boy there, when she could not have him there and have discipline too, it was the equivalent to insisting that she should teach the school [class] without discipline; which she was not bound to do." Other courts have upheld this authority under the doctrine of in loco parentis, but according to some legal authorities that doctrine is either dead or dying. The above amendment extends this inherent

authority to school administrators but denies the power of expulsion or suspension of the pupil from school except as otherwise provided in this act. The term "antisocial" was deleted, for it is redundant. Black's Legal Dictionary defines "disorderly conduct" as including antisocial conduct. The major amendment in this section is to eliminate the total supervision of pupils on their way to and from school. Note the rationale in discussion under Section 5 above. There are strong feelings that matters of disorderly conduct away from school, off the school grounds, and while not under the supervision of a teacher or school administrator are more properly matters for the parents and civil authorities. This change does not prohibit the involvement of school officials in such matters but removes the pupil's subjection to school punishment. This is an important distinction. Other changes are self-explanatory.]

NEW SECTION. Sec. 8. All pupils who attend the common school shall comply with the reasonable written rules and regulations established in pursuance of RCW 28A.58.101. Refusal to obey such rules or regulations shall constitute cause for discipline, suspension, or expulsion.

[Drafter's Note: See rationale under Section 9 below.]

NEW SECTION. Sec. 9. All pupils who attend the common schools shall submit to the reasonable disciplinary actions of teachers, administrators, or disciplinary boards, however constituted, of the school district in which he attends.

[Drafter's Note: Sections 8 and 9 are a reenacted and amended form of RCW 28A.58.200. These are implied from the other sections, but no harm is done in making these requirements explicit. RCW 28A.58.200 reads as follows: "All pupils who attend the common schools shall comply with the rules and regulations established in pursuance of law for the government of the schools, shall pursue the required course of studies, and shall submit to the authority of teachers of such schools, subject to such disciplinary or other action as the local school officials shall determine." Also, Section 9 makes explicit what the courts already require--namely, that discipline be reasonable.]

Sec. 10 RCW 28A.87.140 is amended to read as follows: Any teacher or administrator who shall maltreat or abuse any pupil by administering any unreasonable punishment ((;-)) or who shall inflict punishment on the head of a pupil, upon conviction thereof, shall be guilty of a misdemeanor, the penalty for which shall be a fine in any sum not exceeding one hundred dollars. Said fine, when collected, shall be turned over to the county treasurer and by him transmitted to the state treasurer who shall place the same to the credit of the current school fund of the state.

[Drafter's Note: With the exception of the insertion of the words "or administrator" and the elimination of an unnecessary comma, this section is RCW 28A.87.140. The insertion of the term "or administrator" is consistent with the rationale under Section 7 above.]

NEW SECTION. Sec. 11. The board of directors of any school district may authorize the establishment of pupil disciplinary boards composed of either pupils, teachers, administrators, or parents or any combination thereof. Such disciplinary boards may be authorized to prescribe reasonable punishment and may recommend, but not prescribe, suspension or expulsion to the appropriate school authority. Such school authority shall be granted the power to set aside or reduce any such prescription or recommendation.

[Drafter's Note: The purpose of this section is to permit, but not require, school boards to develop unique methods for handling discipline and the involvement of parents and pupils in such matters. It further provides for an appeal to a school authority. (See Section 12 below.)]

NEW SECTION. Sec. 12. Any pupil, parent, or guardian who is aggrieved by any disciplinary action other than suspension or expulsion shall have the right to an informal conference with the appropriate school authority, designated by the board of directors for such matters, for the purpose of resolving the matter. At such conference the pupil, parent, or guardian shall be authorized to question witnesses.

[Drafter's Note: See rationale under Section 13 below.]

NEW SECTION. Sec. 13. Any pupil, parent, or guardian who after exhausting the remedy prescribed in Section 12 of this act shall have the right to make a formal protest, either in writing or in person, to the board of directors at its next regular meeting. The board may request two calendar days' notification of such protest before placing the matter on the meeting agenda but such protest shall be a matter of public business and the board of directors shall respond in writing to the protest within forty calendar days.

[Drafter's Note: Sections 12 and 13 are designed to provide informal procedures for matters other than suspension and expulsion. It can be argued that no pupil should be punished for any act without some sort of hearing or due process as is supposedly done in criminal proceedings. However, for most routine disciplinary problems such a requirement is very impractical. There is just not a legislative or judicial remedy for all the wrongs that pupils might suffer. It is argued here that the State's paramount concern is when a pupil is being denied the right to attend school. The State's interest exceeds the denial of an individual right, which is an important concern, for the State has a vested interest in the socio-economic status for all its citizens. The right to an informal conference where the complaining pupil, teacher, or administrator can be questioned, to protest to the school board, and to have a formal written response from the board - which implies some sort of follow-up by a school authority not a party to the complaint - appear to be minimal and fair procedures which will not unduly hamper or tie the hands of school officials.]

NEW SECTION. Sec. 14. The board of directors of any school district may delegate to the superintendent or his designee the authority to expel or suspend pupils: PROVIDED, That such expulsion or suspension is ordered after a fair hearing as prescribed in Section 16 of this act, unless the accused pupil and his parent or guardian have knowingly waived the hearing

prior to the suspension or expulsion.

[Drafter's Note: This section provides the right to a fair hearing prior to suspension or expulsion. However, note that Section 15 grants the power of interim suspensions in cases of "dangerous" pupils. The requirement of a fair hearing prior to suspension or expulsion from the school has been mandated by the courts. Note the following excerpt from the Committee attorney's memorandum of September 16, 1969: "It is now a settled question that students dismissed from public educational facilities must be afforded due process of law. Unfortunately, the exact requirements of due process in the school discipline environment is not clear. Courts have, therefore, resorted to a case-by-case examination to determine whether or not in the particular case the rudiments of fair play have been observed. These rudiments may be briefly summarized as notice and some opportunity for hearing before dismissal." In this sense the section merely reflects the current legal requirement.]

NEW SECTION. Sec. 15. All other provisions of this chapter notwithstanding, a pupil may be suspended by a district superintendent or his designee if the superintendent or his designee reasonably believes the pupil is a danger to himself, other pupils, teachers, school administrators, or the educational process of the pupil's school: PROVIDED, That such interim suspension shall continue only until the pupil's dangerous nature ceases or a fair hearing is held, or a fair hearing is waived, and final punishment imposed, whichever shall occur first.

[Drafter's Note: Even though the rule should be that no person is punished unless it results from a fair hearing, there are instances where the pupil's "dangerous tendencies" are such that his presence in the school creates a clear and present danger to himself or others. Only in those cases does this bill provide for interim suspensions.]

NEW SECTION. Sec. 16. Each board of directors that delegates the authority to expel or suspend pupils shall adopt rules and regulations for a fair hearing which include provisions for the protection of the procedural rights of pupils, including but not limited to the following:

(1) The hearing shall be conducted before a school authority designated for such purposes. Such school authority shall not be a complaining witness and shall determine the facts of each case solely on the evidence presented at the hearing. He shall state in writing his findings as to the facts and whether or not the pupil charged is guilty of the conduct charged and the disposition to be made, if any, by way of disciplinary action;

(2) The charged pupil, or in the case of a minor his parent or guardian, shall receive by registered mail or in person a written statement of the charges at least ten calendar days prior to the date of the hearing. He shall be permitted to inspect in advance of such hearing any affidavits or exhibits which school authorities intend to submit at the hearing. He shall have the right of representation by counsel with the right to question complaining witnesses. He shall have the opportunity to present his version as to the charges and to make such showing by way of affidavits, exhibits, and such witnesses as desired;

(3) Either side, at its own expense, may make a record of the events at the hearing.

(4) If the school authority hearing the case imposes a sanction of suspension or expulsion on the aggrieved pupil, or in the case of a minor, his parent or guardian, shall have five school days after the date of the hearing to appeal that decision to the board of directors. If an appeal is not taken, the sanction decided upon shall take effect at the end of this five-day period. If an appeal is taken, the imposition of the sanction shall be stayed until such appeal is decided.

[Drafter's Note: While the courts require due process in suspension and expulsion cases, they are not as yet in total agreement as to what type of proceeding satisfies the due process requirement. It is contended here that it is only a question of time before most, if not all, the traditional due process procedures are incorporated in such cases. Note, for example, the specific instructions given in Esteban (I) v. Central Missouri State College, 277 F. Supp. 649, (W.D. Mo. 1967): "The procedures to be followed in preparing for and conducting such hearing shall include the following procedural features: (1) a written statement of the charges to be furnished each plaintiff at least 10 days prior to the date of the hearing; (2) the hearing shall be conducted before the president of the college; (3) plaintiffs shall be permitted to inspect in advance of such hearing any affidavits or exhibits which the college intends to submit at the hearing; (4) plaintiffs shall be permitted to have counsel present with them at the hearing to advise them; (5) plaintiffs shall be afforded the right to present their version as to the charges and to make such showing by way of affidavits, exhibits and witnesses as they desire; (6) plaintiffs shall be permitted to hear the evidence presented against them, and plaintiffs (not their attorney) may question at the hearing any witness who gives evidence against them; (7) the president shall determine the facts of each case solely on the evidence presented at the hearing therein and shall state in writing his finding as to whether or not the student charged is guilty of the conduct charged and the disposition to be made, if any, by way of disciplinary action; (8) either side may, at its own expense, make a record of the events at the hearing." The instructions in this case, Esteban, which has formed the basis for this section, Subsection 4, is designed to make the appeal provisions explicit and to make certain the imposed sanction does not become effective until the administrative remedy has been exhausted.]

NEW SECTION. Sec. 17. In the case the superintendent or his designee shall order an expulsion or suspension, the so-ordered pupil or in the case of a minor the pupil's parent or guardian, subject to two calendar days' notice to the board, shall have the right to place the order before the board of directors at any regular meeting for its review. At which time the pupil, his parents or guardian, or his attorney shall be given the right to be heard and shall be granted the opportunity to present such witnesses and testimony as the board of directors deems reasonable. Prior to adjournment of the board, it shall make its decision known or agree to one of the following procedures:

(1) Agree to study the hearing record or other materials submitted and report its findings within fifteen calendar days;

(2) Agree to schedule a special meeting to hear further arguments on the case and report its findings within fifteen calendar days;

(3) Agree to hear and try the case de novo before the board of directors within fifteen calendar days and in accordance with the fair hearing provisions of Section 16 of this act.

[Drafter's Note: This section deals with action by the board of directors and should be self-explanatory. Note that it is the board's decision as to how much time and energy will be spent upon the appeal. However, the board's decision is subject to appeal to the courts (See Section 19 below) and that should cause the board to give the matter serious consideration.]

NEW SECTION. Sec. 18. Any board of directors not choosing to delegate the authority of expulsion or suspension shall be governed in its actions by the fair hearing provisions of Section 16 of this act.

[Drafter's Note: This section covers procedures in districts where the board chooses not to delegate its power.]

NEW SECTION. Sec. 19. Within thirty days of receipt of the board of directors' final decision, any pupil, or in the case of a minor the pupil's parent or guardian, desiring to appeal from any action upon the part of a board of directors regarding discipline, suspension, or expulsion may serve upon the chairman of the board of directors and file with the clerk of the superior court in the county in which the school district is located a notice of appeal which shall set forth also in a clear and concise manner the errors complained of. Such appeal shall be heard expeditiously and de novo by the superior court. The provisions of Chapter 28A.88 shall not be applicable to this section.

[Drafter's Note: This section permits an appeal to the courts of any punishment imposed by the board of directors.]

NEW SECTION. Sec. 20. RCW 28A.58.190, 28A.58.200, 28A.67.100, and 28A.87.120 are each repealed.

[Drafter's Note: These are the sections noted above which are being moved into this new chapter either as is or in amended form.]

NEW SECTION. Sec. 21. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[Drafter's Note: This is a standard savings clause.]

NEW SECTION. Sec. 22. This act shall take effect July 1, 1970.

[Drafter's Note: The new education code becomes effective July 1, 1970. Unless there is an emergency situation, for bill drafting purposes matters are simplified by making all education bills in the 1970 Session effective on the same date.]

JOINT COMMITTEE ON EDUCATION AMENDMENT TO THE PROPOSED STUDENT CONDUCT AND DISCIPLINE LEGISLATION

On January 12, 1970, the full committee met to consider its legislative program. At that time, the Committee attached two amendments to the proposed student conduct and discipline legislation prior to its introduction into the special session. The first amendment stated:

> ADD TO SECTION 12. Such appropriate school authority is hereby granted power to require attendance of one or more parents or guardians at an informal conference. Such power includes the power of subpoena, as set forth in RCW 5.56.020.

The effect of this amendment will be to authorize those authorities dealing with conduct and discipline cases to compell parents to come to the school and meet with the authorities in order to help deal with the problems the student is having. Suspension is often used by school authorities as a method whereby they can force the parents of students to take cognizance of the discipline problem the students are having in the school. Many parents are reluctant to come to the school to discuss such problems with the school authorities and suspension is then used as a last resort technique in an attempt to get them to confer with the disciplining officials. Since the proposed student conduct and discipline legislation would restrict the powers of the administrators to use the suspension procedure, it was felt necessary to provide an alternative method whereby school authorities could bring the parents to the schools in order to confer with them concerning the problems of the students.

The second amendment stated:

> ADD TO SECTION 13. Provided, however, notwithstanding any other provision of law, said person making such formal protest shall be entitled to a closed hearing by requesting it.

This provision was added to the section of the bill that allowed the student to have a public hearing relating to his suspension and expulsion from school. It was felt that in some instances the student or parents would prefer to have a closed hearing so that the offenses in question would not become general public knowledge. Since the language of the proposed act is not clear in this regard, the amendment was added to Section 13.